II. COMMITTEE ACTIONS AND FILINGS OF THE PARTIES PRIOR TO THE AUGUST 4, 2010 HEARING ON PRE-TRIAL MOTIONS

a. Discovery Matters

ii. Depositions

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)

NOTICE OF JUDGE G. THOMAS PORTEOUS, JR.
REGARDING POSSIBLE FUTURE DEPOSITION REQUESTS

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, by and through counsel, and files this notice regarding possible future deposition requests with the Senate Impeachment Trial Committee.

Judge Porteous is filing this notice in order to provide the Senate Trial Committee with information regarding the possible need for future depositions in this matter. At this point, Judge Porteous suspects that he may seek to depose a limited number of witnesses as part of his pretrial preparation. However, filing a request for permission to subpoena and depose witnesses at this point is premature because a substantial amount of discovery is still outstanding and it is possible that production of the requested discovery will eliminate the need for one or more depositions. Accordingly, Judge Porteous is filing this notice in order to inform the Committee that he may still file for permission to subpoena witnesses and to take their depositions – a practice that was permitted by the Senate Impeachment Trial Committee in the Hastings impeachment trial process – at a later date.

Finally, Judge Porteous seeks to raise an issue that may require additional consideration by the House Managers and the Committee in the event that the House Managers determine additional depositions are necessary. While the House Managers have independent subpoena power, Judge Porteous notes that for the House Managers to use that power in order to conduct pretrial depositions would place the House at a significant advantage and would be grossly unfair to Judge Porteous. Accordingly, Judge Porteous suggests that, consistent with the practice of the House in the Hastings impeachment trial, any pretrial depositions by the House should require approval of the Senate Impeachment Trial Committee prior to scheduling such depositions and that Judge Porteous' counsel should be permitted to participate in any depositions approved by the Committee.

Respectfully submitted,

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Submitted: May 28, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May 2010, a copy of the foregoing pleading was served by electronic mail on the House Managers, through counsel, at the following e-mail addresses:

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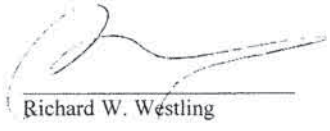

Richard W. Westling

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In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

RESPONSE BY THE HOUSE OF REPRESENTATIVES
TO NOTICE OF JUDGE G. THOMAS PORTEOUS, JR.
REGARDING POSSIBLE FUTURE DEPOSITION REQUESTS

The House of Representatives ("House"), through its Managers and counsel, respectfully responds to the Notice of Judge G. Thomas Porteous, Jr. Regarding Possible Future Deposition Requests. In support of this response, the House respectfully submits:

Judge Porteous has had both ample time and information to identify witnesses he might want to depose. If he seeks to depose a witness who, for example, he believes would have exculpatory testimony but would otherwise be unavailable, it is hardly conceivable that such a witness would be unknown to him at the present time.[1] As noted, Judge Porteous has been provided in depth knowledge of the House's case.[2] In light of the procedural posture of the case, Judge Porteous's contention – that he needs additional

[1]Of course, Judge Porteous has no right to depose any witnesses . See Disposition of Pretrial Issues, Senate Impeachment Trial Committee (Judge Hastings), Apr. 14, 1989 at 10, reprinted in Report of the Senate Impeachment Trial Committee on the Articles against Judge Alcee Hastings, S. Hrg. 101 194, Pt. 1, 101st Cong., 1st Sess. at 290 (1989) ("The committee knows of no precedent for the pretrial examination of witnesses in connection with a Senate impeachment trial.").

[2]See Response by the House of Representatives to Motion of Judge G. Thomas Porteous, Jr. For Discovery from the House Managers. Additionally, the House Managers in an April 13, 2010 letter to Senators McCaskill and Hatch responding to a series of questions from Senate Legal Counsel have previously provided a preliminary trial witness list.

time to identify witnesses to be deposed because "substantial discovery" remains – does not provide a reasonable basis for any failure to identify witnesses to be deposed at this time.

In order to avoid any unnecessary delay, the House requests that Judge Porteous be directed to identify any witnesses he might want to depose and to submit a factual justification for the requested deposition.

The House does not foresee taking additional depositions absent compelling circumstances, such as an essential witness who might be unavailable at trial.

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

Adam Schiff, Manager

Bob Goodlatte, Manager

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

June 4, 2010

In The Senate of The United States
Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

JUDGE G. THOMAS PORTEOUS, JR.'S MOTION FOR AUTHORITY TO ISSUE OR, ALTERNATIVELY, ASSISTANCE IN ISSUING, DEPOSITION SUBPOENAS AND REQUEST FOR EXPEDITED CONSIDERATION

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and respectfully requests authority to issue, or, alternatively, assistance from the Senate, acting through the Senate Impeachment Trial Committee (the "Committee"), in issuing, deposition subpoenas. In support, Judge Porteous states as follows:

1. In connection with its impeachment proceedings, the House of Representatives (the "House"), acting through its Special Impeachment Counsel, undertook an extensive investigation into the allegations lodged against Judge Porteous. In addition to receiving significant volumes of documentary material from the Fifth Circuit and a variety of third-parties, including the Department of Justice, the Metropolitan Crime Commission, and other entities,[1] the House Impeachment Counsel obtained deposition testimony from a large number of key witnesses – including from most of the individuals that the House intends to call to testify at the evidentiary hearing.

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[1] Access to these materials, which thus far House Impeachment Counsel has denied, is the subject of separate motions that Judge Porteous filed on June 27, 2010.

2. Specifically, during their investigation, House Impeachment Counsel "interviewed over 70 individuals and took over 25 depositions." *See* H. Rpt. 111-427, Report of the House Judiciary Committee concerning the Impeachment of Judge Porteous (dated March 4, 2010), at 7. While the identity of all the individuals that the House Impeachment Counsel deposed is unknown, it is apparent from their most recent Exhibit List that the House Impeachment Counsel were permitted to take depositions of at least the following 26 people: Robert Creely (on 8/28/2009, HP Ex. 16); Jacob Amato, Jr. (on 10/14/2009, HP Ex. 24); Leonard Levinson (on 8/24/2009 & 1/6/2010, HP Ex. 30 & 31); Don Gardner (on 9/22/2009, HP Ex. 36); Rhonda Danos (on 8/25/2009 & 12/3/2009, HP Ex. 46 & 47); Louis Marcotte (on 10/13/2009, HP Ex. 68); Lori Marcotte (on 8/26/2009, HP Ex. 76); Jeffrey Duhon (on 7/23/2009, HP Ex. 78); Charles Kerner (on 12/3/2009, HP Ex. 79); Aubrey Wallace (on 7/24/2009, HP Ex. 83); Ronald Bodenheimer (on 8/27/2009, HP Ex. 86); Bruce Netterville (on 8/26/2009, HP Ex. 92(a)); Claude Lightfoot (on 9/24/2009, HP Ex. 123); T. Patrick Baynham (on 9/23/2009, HP Ex. 158); Timothy Young (on 9/23/2009, HP Ex. 159); Peter S. Koeppel (on 9/21/2009, HP Ex. 183); Richard Windhorst (on 9/22/2009, HP Ex. 184); Ernest Souhlas (on 9/23/2009, HP Ex. 185); Jody Rotolo (on 9/25/2009, HP Ex. 192); Sharon Konnerup (on 8/26/2009, HP Ex. 194); Leonard Cline (on 8/26/2009, HP Ex. 195); Diane Lamulle (on 9/26/2009, HP Ex. 197); William Hedrick (on 1/7/2010, HP Ex. 166); Kenneth A. Bradley (on 9/21/2009, HP Ex. 181); Richard Chopin (on 9/22/2009, HP Ex. 182); and T. Allen Usry (on 10/14/2009, HP Ex. 163).

3. While the House, through its Impeachment Counsel, has had the opportunity to take literally dozens of depositions in order to prepare, organize, and

refine its prosecution case, Judge Porteous has not yet been able to take even one deposition in support of his defense. It is in light of this stark imbalance that Judge Porteous now requests authority to issue or, alternatively, assistance from the Senate in issuing, deposition subpoenas for a limited number of witnesses.

4. Judge Porteous seeks this authority and/or assistance so that he may take depositions of the following 10 individuals[2] – all of whom the House Managers have had an opportunity to depose and most of whom the House Managers have indicated that they intend to call to testify against Judge Porteous.[3] For context, each individual's name is followed by a short description of that person's relationship to the allegations charged in the Articles of Impeachment.

a. Jacob Amato, Jr.

i. Mr. Amato is an attorney with whom Judge Porteous is alleged to have engaged in a corrupt relationship. Mr. Amato represented Liljeberg Enterprises in connection with a lawsuit brought by Lifemark Hospitals of Louisiana, Inc., over which litigation Judge Porteous presided as a federal district court judge. Mr. Amato (and/or his law firm) is referenced by name in Articles of Impeachment I and IV.

ii. In an attempt to secure his deposition without Senate assistance, on June 28, 2010, counsel for Judge Porteous contacted counsel for Mr. Amato and inquired whether he would appear voluntarily for a deposition. On June 29, 2010, Mr. Amato's counsel informed Judge Porteous's counsel that Mr. Amato will not agree to appear voluntarily for a deposition.

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[2] Judge Porteous respectfully reserves the right to supplement this request and seek authority and/or assistance to take additional depositions, should such be warranted based on the deposition testimony and/or defense counsel's investigation and trial preparation.

[3] *See* Preliminary Designations by the House of Representatives of Witnesses, Requests for Subpoenas, Requests for Immunity and Stipulations, dated June 8, 2010.

b. Robert Creely

i. Mr. Creely is an attorney with whom Judge Porteous is alleged to have engaged in a corrupt relationship. Mr. Creely (and/or his law firm) is referenced by name in Articles of Impeachment I and IV.

ii. In an attempt to secure his deposition without Senate assistance, on June 28, 2010, counsel for Judge Porteous contacted counsel for Mr. Creely and inquired whether he would appear voluntarily for a deposition. On June 29, 2010, Mr. Creely's counsel informed Judge Porteous's counsel that Mr. Creely will not agree to appear voluntarily for a deposition.

c. Louis Marcotte, III

i. Mr. Marcotte, who is the brother of Lori Marcotte, was an employee and/or part owner of Bail Bonds Unlimited, and is referenced by name in Articles of Impeachment II and IV. Mr. Marcotte pleaded guilty to conspiracy to violate the Racketeering Influenced and Corrupt Organizations ("RICO") Act, based upon predicate crimes of mail fraud and public bribery, and, as a part of his plea agreement, has agreed to cooperate with the government.

d. Lori Marcotte

i. Ms. Marcotte, who is the sister of Louis Marcotte, was an employee and/or part owner of Bail Bonds Unlimited, and is referenced by name in Articles of Impeachment II and IV. Ms. Marcotte pleaded guilty to conspiracy to commit mail fraud and, as a part of her plea agreement, has agreed to cooperate with the government.

e. Rafael Goyeneche

i. Mr. Goyeneche is the president of the Metropolitan Crime Commission and participated in that organization's 1994 investigation into Judge Porteous.

f. DeWayne Horner

i. Mr. Horner was a Special Agent with the Federal Bureau of Investigation, who worked out of the New Orleans field office and was assigned to the Public Corruption Squad.

Mr. Horner participated in the Department of Justice's investigation into Judge Porteous.

g. Joseph Mole

i. Mr. Mole is an attorney who represented Lifemark Hospitals of Louisiana, Inc. in its lawsuit against Liljeberg Enterprises, over which litigation Judge Porteous presided as a federal district court judge.

h. Claude Lightfoot

i. Mr. Lightfoot is an attorney who represented Judge Porteous in connection with the bankruptcy proceedings described in Article of Impeachment III.

i. Bobby Hamil

i. Mr. Hamil was a Special Agent with the Federal Bureau of Investigation in 1994 and participated in the background investigation of Judge Porteous relating to his nomination to the federal bench. Mr. Hamil was present for various interviews related to that investigation.

j. Cheyanne Tackett

i. Ms. Tackett was a Special Agent with the Federal Bureau of Investigation in 1994 and participated in the background investigation of Judge Porteous relating to his nomination to the federal bench. Ms. Tackett was present for various interviews related to that investigation.

5. Given the allegations set out in the House's Articles of Impeachment, the relevance of these individuals' testimony is obvious. Judge Porteous seeks to elicit from these witnesses exculpatory and/or contradictory testimony concerning the House's Articles of Impeachment, including its honest services article (Article I) and conflicts of interest article (Article II). In addition, some of these witnesses should be able to shed light on what information about Judge Porteous's previous conduct as a state court judge was known to investigators prior to his confirmation to the federal bench.

6. Moreover, permitting Judge Porteous to take these depositions will promote both the Congress's and Judge Porteous's interest in ensuring a fair, efficient, and equitable process in at least three ways.

7. First, allowing the depositions will enhance the efficiency of the parties' presentation of evidence at the evidentiary hearing and reduce the potential that the hearing will be unduly delayed. In particular, depositions will assist the defense in determining the relevant information known by each witness, thereby permitting Judge Porteous's counsel to better plan and streamline their direct- and cross-examinations. While many of the individuals that Judge Porteous is seeking to depose have testified previously, that testimony was elicited either solely or primarily by government attorneys (including Justice Department lawyers, Fifth Circuit investigators, and House Impeachment Counsel) in connection with their investigation and prosecution of Judge Porteous. Accordingly, there is no assurance that those examinations elicited all relevant exculpatory and/or contradictory testimony. Indeed, it would be inequitable in the extreme to limit Judge Porteous's pretrial witness preparation to only that testimony elicited by his prosecutors. Depositions will also enable the Committee and the parties to determine more quickly which witnesses will require immunity orders and, thus, afford the Committee more time to obtain such orders. Depositions will further assist the defense in responding to the House Managers' extensive proposed stipulations – of which there are more than 300.

8. Second, granting Judge Porteous's request to take pretrial depositions will serve the interests of equity and due process. As noted above, the House Managers have utilized the extensive powers and resources available to them prodigiously. In particular,

they have used the House's subpoena power to take at least 28 depositions of 26 different people in preparing their case. Judge Porteous, however, has not had the opportunity to take even a single deposition in connection with his defense. Core constitutional concepts of fairness and due process, which this Committee has committed itself to,[4] simply cannot countenance such disparity.

9. Third, allowing the requested depositions comports with past precedent. In the 1989 impeachment trial of Judge Alcee Hastings, the defense requested an opportunity to take a series of pretrial depositions. The Committee entertained this request and advised the defense to identify those individuals that it wished to depose, describe the testimony that it expected to elicit from each, and note whether the individuals had been asked to provide information voluntarily and, if so, their responses. *See* Hastings Senate Impeachment Trial Committee Disposition of Pretrial Issues, First Order (S. Hrg. 101-194, pt. 1, at 289-90). Hastings's counsel responded with a list of 16 witnesses that he proposed to depose. (*Id.* at 457-47.)

10. The House Managers responded (through their counsel, Mr. Baron) to the proposed deposition list by stating that they "do not oppose Respondent's request for depositions except to the extent that any such depositions exceed the scope of the charges contained in the Articles of Impeachment...." (*Id.* at 469; *see also id.* at 572-73 (Statement of House Manager Bryant at 5/18/1989 Committee Hearing: "Mr. Chairman, we don't mind if [the defense] deposes all these people; it is fine with us.") The House

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[4] *See* Recording of Committee Meeting held on April 13, 2010, http://www.senate.gov/general/impeachment_hearing_porteous_041310.htm (Senator and Committee Chair McCaskill stating that the "guiding force of this matter has to be due process"; Senator and Committee Vice-Chair Hatch stating that "we must proceed with the utmost seriousness and dedication to fairness").

Managers then proceeded to submit their own request for three pretrial deposition subpoenas, which they needed "in order to prepare effectively for the presentation of evidence in this impeachment case...." (*Id.* at 473.) At a subsequent Committee hearing, House Impeachment Counsel (Mr. Baron) explained that he sought to depose these three individuals because one of them "could be a very important witness" but that he "can't tell for sure, because she will not talk to us." (*Id.* at 558.) As to the other two proposed deponents, Mr. Baron explained that the House Managers sought to take their depositions because Judge Hastings had listed them as potential witnesses and Mr. Baron "want[ed] to find out what [they were] going to say. That is part of my pretrial preparation. I do not like to be surprised." (*Id.* at 561.)

11. Judge Porteous concurs with Mr. Baron – he too does not want to be surprised. That is precisely why permitting Judge Porteous an opportunity to take depositions in this matter is so crucial. To deny that opportunity would place Judge Porteous at a severe disadvantage vis-à-vis the House Managers, who have had an unlimited opportunity to take all of the depositions that they wished. Moreover, the disadvantage is exacerbated in this case since Judge Porteous was never criminally charged. Unlike Judges Hastings and Nixon, whose Senate impeachment trials followed extensive criminal trials, in connection with which they were afforded more fulsome discovery rights and an opportunity to examine and cross-examine exhaustively the witnesses called against them, Judge Porteous has not yet had a full and fair opportunity to question the witnesses which will be called against him.

12. Finally, because new counsel has only recently been added to this case and because the evidentiary hearing is fast approaching, Judge Porteous cannot proceed apace

to request that these witnesses appear voluntarily, wait for a response, and then seek Senate assistance when they refuse. Given the truncated timeframe set by the Committee in this matter, Judge Porteous simply lacks the time necessary to pursue such a process, comply with the Committee's other pretrial deadlines, and prepare for the evidentiary hearing that is set to begin in two-and-a-half months Thus, in an effort to avoid additional delay, Judge Porteous seeks the immediate assistance of the Senate in resolving this issue.

WHEREFORE, Judge Porteous respectfully requests that the Senate grant him authority to issue or, alternatively, assist him by issuing, deposition subpoenas for the individuals identified above. To the extent that it is required, Judge Porteous also requests that the Senate assist him in obtaining immunity orders for those witnesses who refuse to testify at such depositions without immunity.

Respectfully submitted,

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United States District Court Judge for the
Eastern District of Louisiana

Dated: June 29, 2010

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

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/s/ Daniel T. O'Connor

In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

THE HOUSE'S OPPOSITION TO
JUDGE G. THOMAS PORTEOUS, JR.'S MOTION FOR AUTHORITY TO
ISSUE OR, ALTERNATIVELY, ASSISTANCE IN ISSUING, DEPOSITION
SUBPOENAS AND REQUEST FOR EXPEDITED CONSIDERATION

The House of Representatives ("House"), through its Managers and counsel, respectfully submits to the Senate Impeachment Trial Committee ("Committee") this Opposition to Judge Porteous's above-captioned motion seeking to take depositions of ten witnesses.

I. OVERVIEW

An impeachment trial is not simply a variant of the civil litigation process. Accordingly, Judge Porteous has no inherent right to take any depositions in connection with this Impeachment proceeding. Moreover, Judge Porteous has not satisfied the narrow criteria pursuant to which depositions were permitted in the Hastings Impeachment proceedings, that is, for witnesses who have not previously testified and whose testimony is central to the case of the party seeking to take the deposition. To the contrary, many of the witnesses who Judge Porteous seeks to depose have testified on multiple occasions, including circumstances where they were called by Judge Porteous, cross-examined by Judge Porteous or his counsel, or where Judge Porteous's counsel was

provided the opportunity to examine them and declined to do so. Indeed, Judge Porteous's assertion that he "has not yet had a full and fair opportunity to question the witnesses which [sic] will be called against him" is patently inaccurate. Moreover, three of the ten witnesses have extremely limited roles – namely, identifying and authenticating their 1994 write-ups of interviews with Judge Porteous. As to these witnesses, Judge Porteous has been provided the write-ups of the interviews, and the contents of their trial testimony is thus well-known to Judge Porteous. Judge Porteous's Motion should therefore be denied.

II. JUDGE PORTEOUS'S MOTION SHOULD BE DENIED BECAUSE THE WITNESSES HAVE EITHER ALREADY TESTIFIED OR ARE NOT SUFFICIENTLY CENTRAL TO HIS CASE

In support of his request for depositions, Judge Porteous cites to certain arguments made by counsel in the Hastings Impeachment.[1] Specifically, Judge Porteous somewhat disingenuously cites to certain positions of the parties in that case, but fails to discuss the actual ruling of the Senate Committee, which, in substance (and with one narrow exception), rejected the parties' requests for depositions where prior witness testimony was available.

The pertinent language of the Senate's ruling is as follows:

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[1]Even this discussion of the procedural history is incomplete. The position of the House, as stated by its Manager (Rep. Bryant), made it clear that the House's request for depositions was in response to Judge Hastings's request: "Let me also say, we are not urging the Senate either to grant them [witness depositions] or not grant them. We are pointing out that there is no authority to insist upon them. If you choose to grant them, very well, we would like to have our three granted as well, is all I am saying." Report of the Senate Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings ["Hastings Hearing Report"], S. Hrg. 101-194, Pt. 1 at 558 (1989) (statement of Mr. Bryant).

> In ruling upon these requests, unprecedented in the context of an impeachment proceeding, the committee has been guided by whether a strong showing of need has been made. In particular, the committee has considered, first, whether or not there has been an adequate showing that the deposition could ascertain relevant evidence, and second, whether or not the parties already have a sufficient basis for trial preparation in any previous testimony by a proposed deponent.[2]

The Hastings Committee permitted certain depositions. In approving one of the House depositions, the Committee noted that the witness "has never previously testified."[3] Other requests by the House for witness depositions were denied because "there is no indication that either of these witnesses is sufficiently central to these proceedings. . . ."[4] The Committee approved one deposition sought by Judge Hastings "because Judge Hastings has argued that [the witness's] testimony may be especially central to his defense."[5] The Committee further informed Judge Hastings that he could supplement his deposition requests, but in doing so, Judge Hastings "should be mindful of whether or not he has access to the individual's prior testimony."[6]

The narrowness of that Order is underscored by a consideration of the Hastings Hearing where the Hastings Committee consider the parties' respective deposition requests. At that Hearing, the Hastings Committee focused on two points in particular, as

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[2]Impeachment Trial Committee Disposition of Pretrial Issues Fourth Order ["Fourth Order"], May 24,1989 at 5-6, published in Hastings Hearing Report, at 601, 605-06 (emphasis added). That Order is attached to this Opposition as "Attachment 1."

[3]Fourth Order at 8, Hastings Hearing Report at 608.

[4]Fourth Order at 7, Hastings Hearing Report at 607.

[5]Fourth Order at 6, Hastings Hearing Report at 606.

[6]Fourth Order at 7, Hastings Hearing Report at 607. That Order also required a showing by Judge Porteous as to whether the witnesses would provide him information voluntarily.

reflected in the subsequent order. First, the Hastings Committee focused on the extent to which the depositions would permit the moving party to affirmatively advance its case.[7] That concern is entirely antithetical to the request by Judge Porteous, namely, that he should be permitted to depose the House's witnesses – not for the purposes of advancing his case, but, essentially to have a dry run at cross-examination. Second, the Hastings Committee drilled down on whether prior transcripts for the given witnesses were available. As Vice Chairman Specter stated, after inquiring whether a given witness had testified: "That is an important fact, at least in my mind. If someone has testified before, I would be disinclined to use compulsory process [to obtain a deposition] on her."[8]

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[7]Thus, nearly the entire colloquy associated with the deposition motions consisted of the Senate seeking proffers from both the House and Judge Hastings of what they expected the witnesses to testify to and how that testimony would affirmatively advance their cases. See Hastings Report at 557-81. Thus, for example, Vice Chairman Specter asked Mr. Baron as to one witness: "What would you expect her to testify to?" Id. at 558. Chairman Bingaman discussed with Judge Hastings's attorney how the witnesses would "prove the [Judge Hastings's] theory or to develop the theory . . ." Id. at 563. As to another witness, Vice Chairman Specter asked: "What would expect to prove through him." Id. at 571. As to Department of Justice and FBI officials, Chairman Bingaman asked: "What is your either [sic] offer of proof or hope for proof?" Id. at 574. As to another witness, Senator Specter asked: "[W]e are waiting to hear what relevance there is to anything, to an offer of proof." Id. at 575. Judge Porteous juxtaposes Mr. Baron's statements in Hastings in which he explains why the House sought a deposition of a potential House witness (that is, to know what the witness would say before the House were to call him) to support the contention that Judge Porteous should be entitled to depose the House's witnesses in this case, where such depositions have no possible relevance to the proof of Judge Porteous's case. These different reasons for a deposition are night and day.

[8]Hastings Report at 563. See also: "Vice Chairman: Hasn't he testified before at Judge Hastings' criminal trial?" Id. at 562; "The Chairman: [Y]ou have got a lot of testimony by most of these people. Most of these are not new names. It seems that that should give you some inclination of what you expect to face when you get into the trial." Id. at 562; "[Judge Hastings's attorney]: [O]ne problem is that [the witness] has never testified anywhere." Id. at 566; "The Chairman: Do you have that transcript? [Judge Hastings's attorney]: I do, indeed." Id. at 567.

Thus, the principles that emerge from the Hastings Impeachment, individually and collectively, compel the denial of Judge Porteous's deposition requests. As described in detail below, as to seven of the witnesses, there is "already . . . a sufficient basis for trial preparation in . . . previous testimony," and, as to the remaining three, "there is no indication that [they] are sufficiently central to these proceedings." Finally, Judge Porteous advances no credible contentions and fails to proffer any claim that that any of the witnesses have evidence that would affirmatively support his defense. Certainly, Judge Porteous has not demonstrated a "strong showing of need" for depositions, that is, the need to depose: 1) central witnesses, 2) who have never testified or who have refused to cooperate, and 3) who are alleged to have relevant evidence "that is especially central to his defense." As described below, none of the witnesses listed by Judge Porteous satisfy these criteria.

III. JUDGE PORTEOUS HAS NOT DEMONSTRATED ANY NEED TO DEPOSE THE WITNESSES WHO HE HAS LISTED

The following witness-by-witness discussion sets forth the notice that Judge Porteous presently has of the anticipated trial testimony, as well as the numerous witnesses whom Judge Porteous or his counsel have actually cross-examined, been given the opportunity to cross-examine, or have called as a witness. As is clear, in light of the detailed notice that has been provided to Judge Porteous of the precise contours of the witnesses' testimony, Judge Porteous cannot meet the "need" showing that was required in the Hastings Impeachment proceedings:

1) Jacob Amato. Mr. Amato has testified three times (before the Grand Jury, the Fifth Circuit, and the House Impeachment Task

Force). He was cross-examined by Judge Porteous before the Fifth Circuit and was cross-examined by Judge Porteous's attorney before the House. Judge Porteous was present during Mr. Amato's House testimony. All transcripts have been provided to Judge Porteous's attorneys, and Judge Porteous will be able to assist his attorneys in the examination of Mr. Amato at the Impeachment trial. No reasons exist to permit Judge Porteous to depose Mr. Amato.

2) Robert Creely. Mr. Creely has testified three times (before the Grand Jury, the Fifth Circuit, and the House Impeachment Task Force). He was cross-examined by Judge Porteous before the Fifth Circuit and was cross-examined by Judge Porteous's attorney before the House. Judge Porteous was present at Mr. Creely's House testimony. All transcripts have been provided to Judge Porteous's attorneys, and Judge Porteous will be able to assist his attorneys in the examination of Mr. Creely at the Impeachment trial. No reasons exist to permit Judge Porteous to depose Mr. Creely.

3) Louis Marcotte. Mr. Marcotte has been interviewed by the FBI on numerous occasions on matters that involved Judge Porteous, and he testified before the House Impeachment Task Force. Judge Porteous's attorneys were provided the opportunity to cross-examine Mr. Marcotte in his House testimony. Judge Porteous was present at Mr. Marcotte's House testimony. The House transcript and the FBI "302s" constituting the write-ups of Mr. Marcotte's interviews have been produced to Judge

Porteous. Judge Porteous is fully aware of Mr. Marcotte's testimony and will be able to assist his attorneys in the examination of Mr. Marcotte at the Impeachment trial. No reasons exist to permit Judge Porteous to depose Mr. Marcotte.

4) Lori Marcotte. Ms. Marcotte has been interviewed by the FBI on numerous occasions on matters that involved Judge Porteous, and she testified before the House Impeachment Task Force. Judge Porteous's attorneys were provided the opportunity to cross-examine Ms. Marcotte in her House testimony. Judge Porteous was present during Ms. Marcotte's House testimony. The House transcript and the FBI "302s" constituting the write-ups of Ms. Marcotte's interviews have been produced to Judge Porteous. Judge Porteous is fully aware of Ms. Marcotte's testimony and will be able to assist his attorneys in the examination of Ms. Marcotte at the Impeachment trial. No reasons exist to permit Judge Porteous to depose Ms. Marcotte.

5) Rafayel Goyeneche. Mr. Goyeneche participated in an interview of Judge Porteous in November of 1994. This interview occurred as part of Mr. Goyeneche's investigation of a complaint that Judge Porteous, in his final days on the state bench, had set aside the conviction of a Marcotte employee (Aubrey Wallace) as a favor to Louis Marcotte. In that interview, when asked about his relationship with Louis Marcotte, Judge Porteous had admitted going to Las Vegas with Louis Marcotte, but denied that Louis Marcotte had paid for his trip. This interview was

written up by Mr. Goyeneche and was maintained in the files of the Metropolitan Crime Commission. It has been provided to Judge Porteous. If Mr. Goyeneche were called as a witness, he would identify the write-up of the interview. There is nothing unusual or surprising about this testimony, which would warrant Judge Porteous taking Mr. Goyeneche's deposition.

6) FBI Special Agent DeWayne Horner. Agent Horner has testified twice (before the Fifth Circuit and the House Impeachment Task Force). He was cross-examined by Judge Porteous before the Fifth Circuit and was cross-examined by Judge Porteous's attorney before the House. All transcripts of his prior testimony have been provided to Judge Porteous's attorneys. Agent Horner will testify primarily as a summary witness as to financial records or certain background information concerning the Wrinkled Robe investigation, to the extent relevant. No reasons exist to permit Judge Porteous to take the extraordinary step of deposing FBI Agent Horner on these issues.

7) Joseph Mole. Mr. Mole has testified three times (before the Grand Jury, the Fifth Circuit, and the House Impeachment Task Force). He was cross-examined by Judge Porteous before the Fifth Circuit and was cross-examined by Judge Porteous's attorney before the House. All transcripts of his prior testimony have been provided to Judge Porteous's attorneys. Mr. Mole will testify about the Liljeberg trial -- facts about which Judge

Porteous is well aware. No reasons exist to permit Judge Porteous to depose Mr. Mole.

8) Claude Lightfoot. Mr. Lightfoot has testified three times (before the Grand Jury, the Fifth Circuit, and the House Impeachment Task Force). He was called as a witness by Judge Porteous and questioned by him before the Fifth Circuit, and his attorney had the opportunity to cross-examine Mr. Lightfoot before the House. All transcripts of his prior testimony have been provided to Judge Porteous's attorneys. Mr. Lightfoot will testify about his representation of Judge Porteous in Judge Porteous's bankruptcy proceedings – facts about which Judge Porteous is well aware. No reasons exist to permit Judge Porteous to depose Mr. Lightfoot.

9) Bobby Hamil. Mr. Hamil was an FBI Agent who participated in interviews of Judge Porteous as part of the FBI background investigation in 1994. These interviews were written up by Mr. Hamil or his partner Cheyanne Tackett (and reviewed by Mr. Hamil), and were made part of the background check files. The entire background check, including the write-ups of these interviews, have been provided to Judge Porteous. If Mr. Hamil were called as a witness, he would identify the write-ups of the interviews as being true and accurate. There is nothing that is unusual or surprising about this, as to warrant Judge Porteous taking Mr. Hamil's deposition.

10) Cheyanne Tackett. Ms. Tackett was an FBI Agent who participated in at least one interview (with Bobby Hamil) of Judge Porteous as part of the FBI background investigation in 1994.[9] The interview was written up by Ms. Tackett (and reviewed by Mr. Hamil) and included in the background check. The entire background check, including the write-up of the interviews with Judge Porteous, have been provided to Judge Porteous. If Ms. Tackett were called as a witness, she would identify the write-up of the interviews as being true and accurate. There is nothing that is unusual or surprising about this testimony, as to warrant Judge Porteous taking Ms Tackett's deposition.

IV. CONCLUSION

Requests for depositions, which were deemed "unprecedented" in 1989, now have only the very limited precedent of the Hastings Impeachment to support them. Moreover even to the extent that this Committee refers to the Hastings Committee's reasoning for guidance, it is apparent that Judge Porteous has not and cannot meet the criteria for depositions that were set forth in Hastings. Judge Porteous has been provided detailed notice of the anticipated Impeachment trial testimony of all the witnesses whom he seeks to depose, which is more than sufficient to permit him to prepare his defense. Indeed, Judge Porteous's requests for depositions of witnesses who have previously testified or are otherwise not central to his defense are fundamentally inconsistent with the requests that were actually approved by the Hastings Committee, and a fair reading of the Hastings Committee's Order compels that Judge Porteous's motion be denied.

[9]It is likely the House will not call both Mr. Hamil and Ms. Tackett. That decision will be made closer to trial.

WHEREFORE, because Judge Porteous has failed to demonstrate a "strong showing of need" for these witness depositions – indeed, because the procedural history demonstrates he has no need for them – the House requests that Judge Porteous's Motion for Depositions be Denied.

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

Adam Schiff, Manager

Bob Goodlatte, Manager

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

July 7, 2010

Attachment 1

United States Senate

WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
DISPOSITION OF PRETRIAL ISSUES
FOURTH ORDER

Upon consideration of the submissions of the parties and after hearing from them at the pretrial conference of May 18, 1989, the chair, in consultation with the vice chair, issues the following rulings on behalf of the committee:

Stipulations

Senate Resolution 480 of the 100th Congress, which was agreed to on September 30, 1988, requested the parties to work together to stipulate to evidentiary matters that are not in dispute and to report to the Senate on the stipulations to which they had agreed. On December 15, 1988, the House served proposed documentary and factual stipulations. On February 20, 1989, the parties reported to the Senate that they had reached no agreement on any stipulations.

On January 17, 1989, by which time it may have become apparent that a voluntary stipulation process would not be productive, the House proposed that the Senate "adopt a rule that would hold that any proposed stipulation of fact filed with the Senate by a party to this proceeding will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation of fact should not be taken as true." The House also requested that the Senate "adopt a parallel rule addressing

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the authenticity of documents, which would establish that any proposed stipulation regarding the admissibility of a document filed with the Senate by a party to this proceeding will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation should not be taken as true." Response of the House of Representatives to the December 12, 1988 Letter from the Senate Committee on Rules and Administration, at 2-3.

On March 31, 1989, the House renewed its proposals on admissions concerning facts and documents, and resubmitted its stipulation of facts in revised form. In a filing with the committee on April 2, 1989, Judge Hastings stated his opposition to the House's proposals for stipulations prior to trial. A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial that is Fair to Respondent, at 31-32.

The committee heard oral argument by the parties on April 12, 1989, and issued its first order on pretrial issues on April 14, 1989. In that order, the committee adopted the House proposal that any proposed stipulation of fact be accepted as true unless the opposing party files an objection, including a proffer as to why the proposed stipulation should not be taken as true. A like rule was adopted for the stipulations as to documents. By its second order, dated April 21, 1989, the committee extended to May 17, 1989 the date for the filing of Judge Hastings' response to the House

stipulations. The second order also extended until May 17, 1989, the date for Judge Hastings to file his own stipulations, which, like those of the House, would be accepted as true unless a specific objection was filed. Judge Hastings chose not to file his own stipulations.

Judge Hastings' Response to Stipulations Proposed by the House, which was received by telecopy on May 18, 1989, does not comport with the committee's order. Judge Hastings has in large part failed to respond to the stipulations proposed by the House. Although his response makes certain generalized objections, a few specific objections, and several generalized concessions, the committee in most cases is unable to determine Judge Hastings' position with respect to particular House stipulations. Instead, Judge Hastings, without having asked the committee to reconsider the April 14, 1989 order at any time between its issuance and the May 17, 1989 date for compliance, argues that he should not be required to take part in this process of identifying those matters that are not truly in contest. While the committee appreciates the inevitable burdens which these proceedings impose on all concerned, it believes that these burdens can best and most efficiently be discharged by complying with its orders, rather than by reiterating at length the difficulties of compliance.

The committee continues to believe that both parties as well as the Senate will benefit from a narrowing of the issues to those matters which are truly in dispute. The committee accordingly will review the stipulations proposed by the House and give careful consideration to any specific objections that it is able to identify in Judge Hastings' May 18, 1989 response and in any supplement that he may file to that response by June 1, 1989. Upon completion of its review, the committee will issue a ruling that sets forth the matters which shall be deemed to be found as true as a matter of record for purposes of the committee's evidentiary proceedings and its report to the Senate of matters that are not in dispute.

If Judge Hastings wishes to participate further in this process of distinguishing contested from uncontested issues, he may submit an additional response to the House's proposed stipulations on or before June 1, 1989. That response shall set forth for each proposed fact and each document his specific objection, or lack of objection, to each particular stipulation. In so doing, Judge Hastings should respond to each factual and documentary stipulation proposed by the House: for example, that a particular document is authentic or is a business or public record, or that a particular fact is true. He need not address whether a particular document or fact is relevant and admissible in evidence.

Although the House has referred to its "proposed stipulation[s] regarding the admissibility of a document," see page 2 supra, we agree with both parties that documentary admissions need go no further than the genuineness of the documents and, for those categories specifically identified by the House, their status as records of regularly conducted activities or public records, see Proposed Stipulations of Documents, filed December 15, 1988, at 1. Admissions concerning facts also need go only to their truth and not to their relevance.

Depositions

By its April 14, 1989 order, the committee advised Judge Hastings that it would consider his request to take pretrial depositions if he provided a list of, and certain information concerning, his proposed deponents. Judge Hastings responded with a Request for Specific Depositions, filed on May 10, 1989, in which he asked that subpoenas be issued for sixteen individuals. The House, on May 16, 1989, filed a request for the issuance of deposition subpoenas, naming three individuals.

In ruling upon these requests, unprecedented in the context of an impeachment proceeding, the committee has been guided by whether a strong showing of need has been made. In particular, the committee has considered, first, whether or not there has been an adequate showing that the deposition

could ascertain relevant evidence, and second, whether or not the parties already have a sufficient basis for trial preparation in any previous testimony by a proposed deponent.

For persons whom Judge Hastings designates as "Participants in Borders's Scheme," the committee declines to issue the requested subpoenas for Rebecca Sutton Nesline and Peter Chaconas. No showing has been made that either Rebecca Sutton Nesline or Peter Chaconas has knowledge of any matter relevant to the Articles of Impeachment. With respect to Joseph Nesline, before deciding whether a threshold showing has been made which might justify the issuance of a subpoena, the committee requests that the House make available to the committee the information in the House's possession concerning Mr. Nesline's competency as a witness.

The committee will grant Judge Hastings' request for the issuance of a subpoena to William Dredge for pretrial testimony. Although Mr. Dredge's testimony before the Eleventh Circuit Investigating Committee is available to Judge Hastings' counsel, the committee has decided to permit a pretrial examination of Mr. Dredge because Judge Hastings has argued that Mr. Dredge's testimony may be especially central to his defense. The committee requests that the parties confer with each other on arrangements for a pretrial examination of Mr. Dredge and that they advise the committee about available dates for that examination so that a subpoena

may be issued for a suitable time.

Concerning the FBI and Justice Department officials for whom Judge Hastings requests the issuance of deposition subpoenas, Judge Hastings is ordered, on or before June 1, 1989, to provide the committee with a list of the three individuals, in order of priority, whom he deems most important to depose. In compiling that list, he should be mindful of whether or not he has access to the individual's prior testimony. He should also furnish to the committee at that time any supporting information, including documentation, which supports his claim that these persons possess knowledge relevant to the Articles of Impeachment, and shows that he is in fact unable to obtain information voluntarily from those persons. The committee will then determine whether it will issue subpoenas for their pretrial examination.

With respect to the House requests, the committee declines to issue subpoenas for Marilyn Carter and Alan G. Ehrlich, both of whom have given previous testimony which is available to the House for its trial preparation. In contrast to Mr. Dredge, whose pretrial examination we will allow, there is no indication that either of these witnesses is sufficiently central to these proceedings to warrant the issuance of subpoenas for their pretrial examination. The committee has decided that a subpoena shall issue for Joanne Tyson Colt, who was a law clerk in Judge Hastings' chambers

in October of 1981, who has never previously testified, and who has refused to be interviewed by the House. The requested subpoena shall issue for her pretrial testimony after counsel for the parties have advised the committee about available dates for Ms. Colt's pretrial examination.

Conduct of Evidentiary Hearings

Pursuant to the committee's second pretrial order, issued on April 21, 1989, the committee heard from the parties at the May 18, 1989 pretrial conference on various proposals concerning the conduct of the evidentiary hearings which shall begin on July 10, 1989. To the extent that Judge Hastings' submissions to the committee should be understood to be a request to postpone those hearings, that request is denied.

One of the issues that the parties addressed, at the committee's request, was whether the evidentiary proceedings should be bifurcated to permit the taking of each party's evidence first on the bribery and perjury articles and second, after receiving all the evidence on those matters, on the wiretap disclosure article. Judge Hastings objects to bifurcation because it would require him, if he testifies, to divide his testimony into two parts. We will respect Judge Hastings' objection and will not bifurcate the evidentiary hearings. The committee will accommodate the interest of the House in deferring, if it so wishes, the portion of its

opening statement on the wiretap disclosure issue to the point in the presentation of its evidence when it is prepared to present its case on that issue.

At the May 18, 1989 conference, the parties also briefly discussed whether it would be appropriate to permit introduction of prior testimony, taken in United States v. Borders, United States v. Hastings, and before the Eleventh Circuit Investigating Committee, in place of taking live testimony before this committee. The committee believes that the use of such prior recorded testimony is desirable in certain circumstances, particularly, for example, where the testimony is not that of a key witness whose credibility is at issue, and encourages its use consonant with fairness to the parties and the development of a coherent record for use by the Senate.

Accordingly, both parties are directed to file and serve, no later than June 14, 1989, an identification of the prior testimony which, to the best of their knowledge, they in fact intend to offer into evidence. That identification shall: (1) specify the proceedings from which the proffered testimony is drawn, (2) append a copy of the proffered testimony, and (3) briefly state why the party believes that it would be appropriate to submit that particular testimony by way of prior recorded testimony rather than through a live witness. Each party shall in its pretrial statement on

June 21, 1989, state, for each such proffer of prior testimony by the opposing party, whether or not it objects to introduction of that prior testimony and, if so, the specific nature of its objections.

The parties were also invited to suggest ways in which the evidentiary proceedings could be structured to permit the taking of evidence within a three-week period of time. In response, the House suggested that the committee adopt the procedure, used by United States District Judge Pierre Laval in the Westmoreland v. CBS defamation case, of dividing a predetermined number of hours between the parties, leaving each side free to determine how its case can best be presented within the available time. Judge Hastings has not responded to the particulars of the House proposal or offered any specific proposals of his own.

The committee believes that guidelines, fairly and flexibly applied, must be adopted to facilitate realistic trial preparation and to enable the Senate and the parties to focus on matters that will be important to the Senate's disposition of the Articles of Impeachment. In framing their final pretrial statements, due on June 21, 1989, and in preparing for the evidentiary proceedings which will commence on July 10, 1989, the parties should operate within guidelines premised on the availability of eighty trial hours during the course of three weeks of hearings. Reserving several hours for miscellaneous matters, the parties should

anticipate that they will each have thirty-eight hours in which to present their evidence on all matters, dividing their time as each sees fit between direct and cross-examination. In addition, each party may present an opening statement of no longer than one hour, which, if either party wishes, may be divided into two portions.

The parties should address in their final pretrial statements of June 21, 1989, and be prepared to discuss at the pretrial conference on June 22, 1989, the amount of time which they intend to allocate to direct testimony, whether by prior or live testimony, and whether their preparation has shown that some modification of these guidelines is necessary. The committee is mindful that the foregoing guidelines may need adjustment, both before commencement of the evidentiary proceedings and in the course of those proceedings, and that there must, and will, be flexibility in their application.

An additional order providing further details about the required content of the final pretrial statements will be issued shortly.

Jeff Bingaman
Chairman

Arlen Specter
Vice Chairman

May 24, 1989

United States Senate

SENATE IMPEACHMENT
TRIAL COMMITTEE

WASHINGTON, DC 20510–6326

MEMORANDUM FOR THE RECORD

Thursday, July 15, 2010

With due notice, the Committee met to deliberate upon pre-trial matters.

The Committee adopted, by the favorable vote of all eight Members present, two resolutions directing the Senate Legal Counsel to apply to the United States District Court for the District of Columbia for two immunity orders: one for Jacob Amato, Jr., and one for Robert Creely. The orders will immunize any testimony Amato or Creely may give as witnesses before the Committee or the full Senate from use in prosecutions other than for perjury, giving a false statement or otherwise failing to comply with the court order.

It was moved, seconded, and unanimously agreed to that the Chairman and Vice Chairman are authorized to issue subpoenas on behalf of the Committee.

It was moved, seconded, and unanimously agreed to that the natural quorum be reduced to one Member for the purpose of the pre-trial examination of a witness at which sworn testimony is heard and evidence taken.

The two motions voted upon are reflected in the adoption of two procedural rules, appearing at 156 Cong. Rec. S5988-02 (daily ed. July 19, 2010).

Erin P. Johnson
Chief Clerk

get low-cost capital into the hands of small businesses—shoe stores, retailers, cleaners, grocery stores—that can then start the hiring of one or two or three extra people. All of that is going to add up to more consumer demand. As people have paychecks, they can go spend them, increasing demand.

This is economics 101. It is very simple. It is bold, it is simple, and I believe it will work. It is voluntary. It is for healthy banks only—for community banks only. It has nothing to do with Wall Street, hedge funds or bailouts. It has everything to do with job creation on Main Street in America, and more than 100 small business organizations are supporting this initiative.

I thank the Members of the Senate, both Democrats and Republicans, who have been very supportive. We are grateful for the wonderful testimony and endorsements we have received from these very powerful organizations and we look forward, after we have the vote on unemployment sometime tomorrow, to getting back to the business of ending this recession. We have all had about as much of it as we can take.

We want to move to stronger times, to happier times. We are only going to do that by giving small business substantial and targeted tax cuts and a lending program that they can work for them and the businesses they want to serve and service every day on Main Streets throughout America.

EXHIBIT 1

SMALL BUSINESS ACCESS TO CREDIT COALITION

(February 17, 2010)

DEAR SENATOR: Access to credit is a critical issue facing small businesses today. The undersigned organizations, representing millions of small business owners in every industry sector, were very disappointed to learn that only one provision related to expanding small business access to credit was included in the draft legislation offered by Senators Baucus and Grassley, the "Hiring Incentives to Restore Employment Act." Furthermore, none of the provisions aimed at improving the Small Business Administration (SBA) lending programs are currently being considered in Majority Leader Reid's latest proposal. We are concerned that if the Senate fails to listen to the needs of small businesses and address the credit crisis, a tremendous opportunity to help create new, sustainable jobs in 2010 and beyond will be lost.

We urge your support for appropriations to extend the SBA loan provisions of the American Recovery and Reinvestment Act (ARRA) through the end of December 2010. The depletion of funds last fall is proof that the SBA programs were, and continue to be, critically important for our nation's creditworthy entrepreneurs. An additional $354 million in appropriations is needed to fund the extension of the higher guaranty percentages and waiver of borrower fees for the balance of the fiscal year.

Additionally, we urge your support for an increase in the maximum loan size and the maximum guaranteed portion of SBA loans. Senators Landrieu and Snowe have introduced legislation that would increase the maximum size of SBA 7(a) and 504 loans from $2 million to $5 million. This legislation would also provide a commensurate increase in the statutory maximum guaranteed portion of SBA 7(a) loans. Moreover, the CBO has determined that their legislation, S. 2869, will have no impact on spending or revenue. These levels are recommended by the Administration, have bi-partisan support and we urge your support as well.

By including these provisions in upcoming legislation aimed at spurring new job creation, there is the potential to leverage an additional $16 billion in SBA lending in 2010. According to Federal Highway Administration data, federal spending on highway programs can generate about 34,100 jobs for every $1 billion spent. Small businesses can generate the same rate of job creation, except that small businesses have the ability to create new, sustainable jobs in every local community. Therefore, by acting on these recommendations, the Senate will help increase small business lending that will result in over 545,000 sustainable new jobs in the next year.

We urge you to act quickly so that we can continue to realize the SBA lending momentum we saw in 2009. Small businesses cannot be the engine of our economy if they continue to face unrelentingly tight credit markets. The Senate must include these important provisions in the job creation bills currently pending in order to restart the flow of credit to America's small businesses or else these entrepreneurs will be left to sit on the sidelines.

Respectfully,

American Apparel & Footwear Association; American Bankers Association; American Foundry Society—California Chapter; American Hotel & Lodging Association; American International Automobile Dealers Association; Associated Builders & Contractors; California Association for Micro Enterprise Opportunity; California Association of Competitive Telecommunications Companies; California Cast Metals Association; California Chapter of the American Fence Contractors Association; California Employers Association; California Fence Contractors Association; California Hispanic Chamber of Commerce; California Metals Coalition; California Public Arts Association, Inc.; Council of Smaller Enterprises (Ohio); Engineering Contractors Association; Entrepreneurs Organization Los Angeles; Fashion Accessories Shippers Association; Flasher/Barricade Association; Golden Gate Restaurant Association; Greater Providence (RI) Chamber of Commerce; Heating, Air Conditioning & Refrigeration Distributors International; Independent Community Bankers of America; Independent Electrical Contractors; Independent Waste Oil Collectors and Transporters; International Council of Shopping Centers; International Franchise Association; Main Street Alliance; Marin Builders' Association; Marine Retailers Association of America; Monterey County Business Council; Napa Chamber of Commerce; National Association for the Self-Employed; National Association of Development Companies; National Association of Government Guaranteed Lenders; National Association of Manufacturers; National Association of Women Business Owners—Inland Empire; National Association of Women Business Owners—Los Angeles; National Automobile Dealers Association; National Cooperative Business Association; National Council of Chain Restaurants; National Council of Textile Organizations; National Federation of Filipino American Associations; National Gay & Lesbian Chamber of Commerce; National Marine Manufacturers Association; National Ready Mixed Concrete Association; National Restaurant Association; National Small Business Association; North American Die Casting Association—California Chapter; North Carolina Bankers Association; Northern Rhode Island Chamber of Commerce; NPES—The Association for Suppliers of Printing, Publishing and Converting Technologies Oakland Metropolitan Chamber of Commerce; Oregon Small Business for Responsible Leadership; Peninsula Builders Exchange of California; Plumbing-Heating-Cooling Contractors of California; Recreation Vehicle Industry Association; Recreational Vehicle Dealers Association; Rhode Island Small Business Summit Committee; Sacramento Asian Chamber of Commerce; San Francisco Builders Exchange; San Francisco Chamber of Commerce; San Francisco Small Business Advocates; San Francisco Small Business Network; Small Business Association of Michigan (SBAM); Small Business Association of New England (SBANE); Small Business California; Small Business Majority; Small Manufacturers Association of California; South Carolina Small Business Chamber; Spa and Pool Industry Education Council of California; SPI: The Plastics Industry Trade Association; The Financial Services Roundtable; The Hosiery Association; Travel Goods Association; Tree Care Industry Association; Urban Solutions—San Francisco; U.S. Chamber of Commerce; U.S. Hispanic Chamber of Commerce.

Mr. MERKLEY. Mr. President, I again thank my colleague for her leadership. We together as a Senate need to stand with our small businesses so we can revive our communities, restore our economy and create jobs for our families. I thank the Senator again for the terrific job she is doing.

MORNING BUSINESS

Mr. MERKLEY. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

IMPEACHMENT TRIAL COMMITTEE RULES

Mrs. MCCASKILL. Mr. President, on April 13, 2010, the Impeachment Trial Committee on the Articles of Impeachment Against Judge G. Thomas Porteous, Jr., adopted two rules to govern aspects of its pretrial proceedings. On July 14, 2010, the committee adopted two additional rules.

The first rule, adopted pursuant to rule 26.7(a)(1) of the Standing Rules of the Senate, establishes seven members as the committee quorum. In the interest of fairness and continuity, and consistent with prior impeachment trials, the committee adopted this rule and established a "natural" quorum of at least seven of its members to receive evidence and conduct the business of the committee.

The second rule delegates the authority of the committee to the chairman

and vice chairman to conduct the daily operations of the committee. This includes, but is not limited to, hiring staff, issuing administrative orders, ensuring compliance with those orders, communicating with counsel for the parties, determining a course of proceeding, and for any other purposes necessary for the committee to discharge its responsibilities and address any other administrative or procedural matters.

The third rule delegates to the chairman, in consultation with the vice chairman, the committee's authority to issue subpoenas for witnesses called to testify or produce documents during all committee proceedings. Senate impeachment rule XI grants to the Impeachment Trial Committee the power granted by Senate impeachment rule VI to the Senate "to compel the attendance of witnesses."

The fourth rule, adopted pursuant to rule 26.7(a)(2) of the Standing Rules of the Senate, reduces to one member the committee quorum for taking sworn pretrial testimony. Judge Porteous has asked to examine certain witnesses in advance of the committee's evidentiary hearings, which will begin on September 13, 2010. Although the pretrial examination of witnesses in a Senate impeachment trial remains rare, the committee has concluded that it should, in the circumstances of the present impeachment, permit a limited number of them. The rule implements the committee's determination that pretrial examinations may proceed before a quorum of one member. As with prior impeachment proceedings, and pursuant to the rules of this committee, the evidentiary hearings will take place in the presence of a natural quorum of at least 7 of its 12 members.

I ask unanimous consent to have those rules printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RULE 1—DELEGATION OF AUTHORITY

The Chairman and Vice Chairman are delegated the authority to communicate as necessary with House counsel and counsel to Judge Porteous, for the purpose of determining a course of proceeding, pretrial and trial scheduling, and for any other purposes necessary for the Committee to discharge its responsibilities. The Chairman and Vice Chairman are further delegated the authority to address any other administrative or procedural matters necessary for the Committee to discharge its responsibilities.

RULE 2—QUORUM FOR RECEIVING EVIDENCE

A natural number of seven members shall constitute a quorum for the purpose of receiving evidence.

RULE 3—SUBPOENAS

The Chairman and Vice Chairman are delegated the authority to issue subpoenas on behalf of the Committee.

RULE 4—QUORUM FOR THE TAKING OF PRETRIAL TESTIMONY

One member shall constitute a quorum for the purpose of a pretrial examination of a witness at which sworn testimony is heard and evidence taken.

HONORING OUR ARMED FORCES

CAPTAIN DAVID A. WISNIEWSKI

Mr. GRASSLEY. Mr. President, I rise to pay tribute to a brave and patriotic son of Iowa who gave his life for his country, CPT David Anthony Wisniewski. He graduated from Woodbury Central High School in Moville, IA, before attending the Air Force Academy. It had been his dream to be an Air Force pilot since visiting Offutt Air Force Base as a young child and he died doing what he loved. By all accounts, David Wisniewski was a remarkable man and his numerous accomplishments include the saving of many lives during his several tours of duty in support of the global war on terrorism. In reference to the reason for his service, I understand that he would end letters to his parents with the reminder that, "I do this so you can sleep safe at night." That is an excellent reminder for all of us to never take for granted the tremendous cost of our freedom. I find that words fail me in trying to describe the debt of gratitude we owe to the courageous and selfless Americans like Captain Wisniewski. We can never begin to repay the debt, but we can honor it by honoring David's memory and by fully appreciating our way of life and the sacrifices made to preserve it. Of course, his loss will be felt very deeply by his parents, Chet and Beverly Wisniewski, and all his family and friends. My prayers go out to them in this difficult time. They are no doubt very proud of their son, and all Iowans can be proud to call him one of our own.

ADDITIONAL STATEMENTS

TRIBUTE TO LENA ARCHULETA

• Mr. BENNET. Mr. President, I would like to recognize a treasured Coloradan, Mrs. Lena Archuleta, a champion of Hispanic rights who is celebrating her 90th birthday this year. Lena represents the true spirit of commitment to the greater good. Her dedication to education and public service demonstrates the change that we can inspire through hard work, sympathy, and kindness.

Lena was born in Raton, NM, in 1920. She was awarded a scholarship at the University of Denver where she studied Spanish and education and later received a master's in library science. In 1951, she joined the Denver Public Schools' Department of Library Services where she maintained her belief that a high-quality education should be accessible to all students regardless of gender, race, or nationality. This belief led Lena to work with the Denver Public Schools' Federal Project to promote and jumpstart programs for bilingual education. In 1974, she used her vast experience in the education field to become the principal at Fairview Elementary and the first Hispanic principal in Denver public schools' history. In addition to this honor, she later became the first Hispanic woman appointed to a central administrative position. Mrs. Archuleta dedicated and accumulated 17 years to New Mexico and Colorado classrooms, as well as 14 years as a school administrator.

While I am pleased to have the honor of recognizing Mrs. Archuleta and her great accomplishments, this is not the first time her dedication and commitment to serving others has been recognized and I doubt that it will be the last. In 1963 the Latin American Educational Foundation appointed her to be the first woman to serve as president of its board of directors. In 1986, she was inducted into the Colorado Women's Hall of Fame as the first Hispanic inductee. In addition to these and other honors, both regional and national, Denver's Lena Lovato Archuleta Elementary School was named after her in 2002. This was perhaps, the most fitting of all of her honors as this elementary school nurtures the same environment of discovery and lifelong learning that Mrs. Archuleta herself created and passed along to fellow educators, students, and community members. Truly representative of her spirit and life's work, Mrs. Archuleta didn't merely accept the honor, she went on to raise $20,000 for the school's library.

Mrs. Lena Archuleta continues to recognize and nurture the skills of her students and those around her. Through continued volunteer work with organizations such as the AARP in Colorado, she inspires others to achieve their goals using entrepreneurship, dedication, and compassion. Working in schools, Lena has inspired many of us through her example. She has shown Coloradans that with humility, devotion, and empathy we can improve the lives of others. For these reasons, today, we recognize Mrs. Lena Archuleta.•

TRIBUTE TO THE REVEREND HARRY BLAKE

• Ms. LANDRIEU. Mr. President, I wish to recognize the career of Reverend Harry Blake, pastor of Mount Canaan Baptist Church of Shreveport, LA. After 15 years as the president of the Louisiana Missionary Baptist State Convention, Reverend Blake is retiring. He has been a friend and outstanding leader for many years.

Pastor of Mount Canaan Baptist Church for almost 44 years, Reverend Blake has also served in various capacities for a number of local and national organizations. Most recently, he was appointed vice president for the Southwest Region of the National Baptist Convention, USA, Inc., having previously served as general secretary. He has also held prominent roles in the Thirteenth District Baptist Association, and within the Louisiana Baptist State Convention, he has served on the Congress of Christian Education and the Evangelical Board.

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
WASHINGTON DC

JONATHAN TURLEY
J.B. AND MAURICE C. SHAPIRO PROFESSOR
OF PUBLIC INTEREST LAW

July 27, 2010

By Electronic Mail and Courier Delivery

The Honorable Claire C. McCaskill, Chair
The Honorable Orrin G. Hatch, Vice Chair
Senate Impeachment Trial Committee
United States Senate
Russell Senate Office Building, Room B-34A
Washington, D.C. 20002

Re: The Impeachment Trial of Judge G. Thomas Porteous, Jr.

Dear Senator McCaskill and Senator Hatch:

On behalf of Judge G. Thomas Porteous, Jr., I am writing to request that the Senate Impeachment Trial Committee (the "Committee") permit the depositions scheduled for August 2, 2010, to be recorded by audiovisual means (*i.e.*, videotaped), in addition to stenographically.

In its July 19, 2010 Order, the Committee found that Judge Porteous had "demonstrated 'a strong showing of need' for taking pretrial depositions of the following four witnesses: (1) Jacob Amato, Jr.; (2) Robert Creely; (3) Louis Marcotte, III; and (4) Lori Marcotte." (*See* Disposition of Judge G. Thomas Porteous, Jr.'s Motions to Compel and for Depositions, at 2.) Accordingly, the Committee set the depositions of these four individuals for August 2, 2010. (*Id.* at 3.) The Committee's Order did not, however, specify the method by which the depositions would be recorded.

To confirm this and other logistical issues in advance of the depositions, counsel for Judge Porteous contacted the Committee staff earlier today and was advised to submit a letter requesting that the depositions be videotaped. Accordingly, we now submit this letter.

We ask that the Committee allow the depositions to be videotaped as a routine and beneficial practice under the federal rules. (*See* Federal Rule of Civil Procedure 30(b)(3)). Such videotape would protect against a witness becoming unavailable and would create a more accurate record for both the parties and the Senate.

Counsel for Judge Porteous conferred with counsel for the House concerning this request, who stated that they oppose the request but declined to give a basis for that opposition.

Respectfully,

Jonathan Turley DTO

Jonathan Turley
Counsel to Judge G. Thomas Porteous, Jr.

cc: Alan I. Baron, Esq., House Impeachment Counsel
Mark Dubester, Esq., House Impeachment Counsel
Harry Damelin, Esq., House Impeachment Counsel
Kirsten Konar, Esq., House Impeachment Counsel
Morgan Frankel, Esq., Senate Legal Counsel

United States Senate

SENATE IMPEACHMENT
TRIAL COMMITTEE

WASHINGTON, DC 20510-6326

MEMORANDUM FOR THE RECORD

Monday, August 2, 2010

With due notice, Chairman McCaskill, Vice Chairman Hatch, Sen. Tom Udall, and Sen. Mike Johanns each individually presided over the taking of the pre-trial deposition testimony of Jacob Amato, Jr., Louis Marcotte, Lori Marcotte, and Robert Creely, respectively. The depositions took place pursuant to the Committee's July 19, 2010, order finding that Judge Porteous demonstrated a strong showing of need for the pre-trial deposition testimony of these four witnesses.

Three hours were allotted for the pre-trial deposition of each witness, including approximately 30 minutes of time reserved for cross examination by the House Managers. All four depositions took place in the U.S. Capitol Visitors Center.

Erin P. Johnson

Chief Clerk